



# आरत का राजपत्र

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PART II—Section 2

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed  
as a separate compilation.

### LOK SABHA

The following Bills were introduced in Lok Sabha on the 26th April, 1968:—

BILL NO. 35 OF 1968

A Bill to provide for the separation of judicial and executive functions  
in Union territories.

BE it enacted by Parliament in the Nineteenth Year of the Republic of India as follows:—

1. (1) This Act may be called the Union Territories (Separation of Judicial and Executive Functions) Act, 1968.Short title, extent and commencement.
- 5 (2) It extends to all Union territories except the Union territory of Chandigarh.
- (3) It shall come into force in a Union territory to which it extends on such date as the Central Government may, by notification in the Official Gazette, appoint in respect thereof.
- 10 Provided that different dates may be appointed for different areas in a Union territory and any reference to the commencement of this

Act in relation to a Union territory or an area therein shall mean the date on which it comes into force in that Union territory or area.

**Definition.**

2. In sections 3 to 9, "Union territory" means any Union territory other than the Union territory of Chandigarh.

**Amendments to  
Code of  
Criminal  
Procedure,  
1898.**

3. For the purpose of separation of judicial and executive functions, the Code of Criminal Procedure, 1898, shall, in its application to a Union territory, be amended in the manner and to the extent specified in the Schedule.

5 of 1898.

**Amend-  
ments not  
to render  
invalid  
notifica-  
tions, etc.,  
before  
com-  
mencement  
of  
Act.**

4. The provisions of this Act which amend the Code of Criminal Procedure, 1898, so as to alter the manner in which, the authority by which, or the law under or in accordance with which, any powers are exercisable, shall not render invalid any notification, order, commitment, attachment, bye-law, rule or regulation duly made or issued or anything duly done before the commencement of this Act, and any such notification, order, commitment, attachment, bye-law, rule or regulation or thing may be revoked, varied or undone in the like manner, to the like extent and in the like circumstances, as if it had been duly made, issued or done after the commencement of this Act by the competent authority and in accordance with the provisions then applicable to such case.

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**Functions  
exercis-  
able by  
Judicial  
and Exe-  
cutive  
Magis-  
trates.**

5. Where under any law the functions exercisable by a Magistrate relate to matters which involve the appreciation or sifting of evidence or the formulation of any decision which exposes any person to any punishment, or penalty, or detention in custody pending investigation, inquiry or trial or would have the effect of sending him for trial before any court, such functions shall, subject to the provisions of this Act and the Code of Criminal Procedure, 1898, as amended by this Act, be exercisable by a Judicial Magistrate; and where such functions relate to matters which are administrative or executive in nature, such as the grant of a licence, the suspension or cancellation of a licence, sanctioning a prosecution, or withdrawing from a prosecution, they shall, subject as aforesaid, be exercisable by an Executive Magistrate.

5 of 1898.

**Repeal of  
laws in  
transferred  
areas  
in Himachal  
Pradesh.**

6. On the commencement of this Act in the transferred areas in the Union territory of Himachal Pradesh, the Punjab Separation of Judicial and Executive Functions Act, 1964, and the Code of Criminal Procedure, 1898, as in force immediately before such commencement in the said areas shall stand repealed except as respects things done or omitted to be done before such repeal under the said Punjab Act or under the provisions of the laws amended by the said Punjab Act and section 6 of the General Clauses Act, 1897, shall apply upon

Punjab  
Act 25 of  
1964.  
5 of 1898.

10 of 1897.

such repeal as if such repeal were a repeal of an enactment by a Central Act; and on such commencement, the said Code as amended by this Act shall extend to, and come into force in, the said areas and the provisions of the laws (other than the said Code) amended by the said Punjab Act shall have effect in the said areas as if such provisions had not been amended by the said Punjab Act.

**Explanation.**—In this section, “transferred areas” means the territories added to the Union territory of Himachal Pradesh by sub-section (1) of section 5 of the Punjab Reorganisation Act, 1966, except the territories comprised in the districts of Lahaul and Spiti.

**31 of 1966.** **7. (1)** Save as provided in this section, nothing in this Act shall **Saving.** be deemed to affect—

- (a) the validity, invalidity, effect or consequence of anything done or suffered to be done before the commencement of this **15** Act;
- (b) any right, privilege, obligation or liability already acquired, accrued or incurred before such commencement;
- (c) any penalty, forfeiture or punishment incurred or inflicted in respect of any act before such commencement;
- (d) any investigation, legal proceeding or remedy in respect of such right, privilege, obligation, liability, penalty, forfeiture or punishment,

**5 of 1898.** and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or **25** punishment may be imposed in accordance with the provisions of this Act and the Code of Criminal Procedure, 1898, as amended by this Act.

**5 of 1898.** **(2)** All legal proceedings pending before a Magistrate or Court immediately before the commencement of this Act shall, if such **30** Magistrate or Court ceases to have jurisdiction in respect of such proceedings under the provisions of the Code of Criminal Procedure, 1898, as amended by this Act, stand on such commencement transferred to the Magistrate or Court having jurisdiction under the provisions of the Code of Criminal Procedure, 1898, as amended by **35** this Act and shall be heard and disposed of by such Magistrate or Court and such Magistrate or Court shall have all the powers and jurisdiction in respect thereof as if they had been originally instituted before such Magistrate or in such Court, including the power of the succeeding Magistrate under section 350 of the Code of Criminal **40** Procedure, 1898.

Power to remove difficulties.

8. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government, in consultation with the High Court having jurisdiction in relation to the Union territory concerned, may, by order, do anything (including the specification of the appropriate Magistrate, whether Judicial or Executive, having jurisdiction under any law) not inconsistent with such provisions for the purpose of removing the difficulty: 5

Provided that no such order shall be made after the expiration of three years from the commencement of this Act.

*Explanation.*—In this section, “High Court” shall have the same meaning as in clause (i) of sub-section (1) of section 4 of the Code of Criminal Procedure, 1898. 10 5 of 1898.

(2) Every order made under sub-section (1) shall be laid, as soon as may be after it is made, before each House of Parliament.

Power of Legislative Assembly of Union territory to amend this Act.

9. Notwithstanding anything contained in section 21 of the Government of Union Territories Act, 1963, the Legislative Assembly of a Union territory may by law amend this Act in its application to that Union territory. 15 20 of 1963.

## THE SCHEDULE

(See section 3)

20

### AMENDMENTS TO THE CODE OF CRIMINAL PROCEDURE, 1898

(5 OF 1898)

1. For section 6, the following sections shall be substituted, namely:—

Classes of Criminal Courts.

“6. Besides the High Court and the Courts constituted under any law other than this Code for the time being in force, there shall be two classes of Criminal Courts, namely:—

I. Courts of Session.

II. Courts of Magistrates.

A1.—*Classes of Magistrates*

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Classes of Magistrates.

6A. There shall be the following classes of Magistrates, namely:—

I. Judicial Magistrates:

(1) Chief Judicial Magistrates.

(2) Judicial Magistrates of the first class.

(3) Judicial Magistrates of the second class.

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**II. Executive Magistrates:**

- (1) District Magistrates.
- (2) Sub-divisional Magistrates.
- (3) Executive Magistrates of the first class.
- (4) Executive Magistrates of the second class.
- (5) Special Executive Magistrates.”.

5        2. For section 7, the following section shall be substituted, namely:—

10        “7. (1) Every State shall consist of sessions divisions and Sessions every sessions division shall, for the purposes of this Code, be divisions a district or part of a district or consist of districts. and districts.

15        (2) The State Government, in consultation with the High Court, may alter the limits or the number of such divisions and districts.

20        (3) The sessions divisions and districts existing in any Union territory immediately before the commencement of the Union Territories (Separation of Judicial and Executive Functions) Act, 1968 in that Union territory shall be sessions divisions and districts respectively, unless and until they are altered as provided in sub-section (2).”.

3. In section 9,—

25        (i) in sub-section (1), after the words “sessions division, and”, the words “in consultation with the High Court,” shall be inserted;

30        (ii) in sub-section (2), after the words “State Government”, the words “, in consultation with the High Court,” shall be inserted;

35        (iii) in sub-section (3), after the words “may also”, the words “, in consultation with the High Court,” shall be inserted; and

40        (iv) in sub-section (4), after the words “State Government”, wherever they occur, the words “, in consultation with the High Court,” shall be inserted.

4. In section 10,—

45        (i) for the marginal heading, the following marginal heading shall be substituted, namely:—

“District Magistrate\* and Chief Judicial Magistrate.”;

(ii) in sub-section (1), for the words "a Magistrate", the words "an Executive Magistrate" shall be substituted;

(iii) in sub-section (2), for the words "any Magistrate of the first class", the words "any Executive Magistrate of the first class" shall be substituted and after that sub-section as so amended, the following sub-sections shall be inserted, namely:—

"(2A) In every district the State Government shall, in consultation with the High Court, invest a Judicial Magistrate of the first class with the powers of a Chief Judicial Magistrate under this Code or any other law for the time being in force.

(2B) The State Government may, in consultation with the High Court, appoint any Judicial Magistrate of the first class to be an Additional Chief Judicial Magistrate and such Additional Chief Judicial Magistrate shall have all or any of the powers of a Chief Judicial Magistrate referred to in sub-section (2A) as the State Government may direct.";

(iv) for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) For the purposes of section 88, sub-section (6C), section 406B and section 528, sub-sections (2B) and (3), such Additional District Magistrate shall be deemed to be subordinate to the District Magistrate; and for the purposes of section 88, sub-section (6C), section 192, sub-section (1), section 406B and section 528, sub-sections (2) and (2A), such Additional Chief Judicial Magistrate shall be deemed to be subordinate to the Chief Judicial Magistrate.".

5. For section 12, the following section shall be substituted, namely:—

Executive  
Magis-  
trates and  
Judicial  
Magis-  
trates.

**12.** (1) The State Government may appoint as many persons as it thinks fit, besides the District Magistrate, to be Executive Magistrates of the first or second class in any district, and the State Government or the District Magistrate, subject to the control of the State Government, may, from time to time, define local areas within which such persons may exercise all or any of the powers with which they may respectively be invested under this Code.

(2) The State Government, in consultation with the High Court, may confer on any person who is a civil judge or a member of the Judicial Service of a Union territory or a group of such

territories, the powers of any class of Judicial Magistrates in any district; and the State Government, in consultation with the High Court, or the Chief Judicial Magistrate, subject to the control of the High Court, may, from time to time, define local areas within which he may exercise all or any of the powers with which he may be invested under this Code.

(3) The State Government, in consultation with the High Court, may, for such period not exceeding three years from the commencement of the Union Territories (Separation of Judicial and Executive Functions) Act, 1968, as it may think fit, appoint as many persons, who are members of a Civil Service in any Union territory or in any State and who are or have been exercising the powers of a Magistrate in such territory or State at or before the commencement of the said Act, as may be considered necessary to be Judicial Magistrates in any district; and the State Government, in consultation with the High Court, may define local areas within which such persons may exercise all or any of the powers with which they may, respectively, be invested under this Code.

(4) Except as otherwise provided by any such definition as is referred to in sub-section (1), (2) or (3), the jurisdiction and powers of such persons shall extend throughout such district.”.

6. In sub-section (1) of section 13, for the word “Magistrate”, the words “Executive Magistrate” shall be substituted.

7. For section 14, the following section shall be substituted, namely:—

“14. The State Government may appoint Executive Magistrates for particular areas or for the performance of particular functions and confer on them such powers as it deems fit. Such Magistrates shall be called Special Executive Magistrates and shall be appointed for such term as the State Government may, by general or special order, direct.”.

8. For sub-section (1) of section 15, the following sub-section shall be substituted, namely:—

“(1) The State Government, in consultation with the High Court, may direct any two or more Judicial Magistrates in any place in a Union territory to sit together as a Bench, and may

Special Executive Magistrates.

BENCHES  
of Judicial Magistrates.

by order invest such Bench with any of the powers conferred or conferable by or under this Code on a Judicial Magistrate of the first or second class, and direct it to exercise such powers in such cases, or, such classes of cases only and within such local limits as the State Government, in consultation with the High Court, thinks fit.”.

9. In section 16,—

(i) for the words “The State Government may, or, subject to the control of the State Government, the District Magistrate”, the words “The High Court, subject to the approval of the State Government”, shall be substituted; and

(ii) for the words “Magistrates’ Benches”, the words “Judicial Magistrates’ Benches” shall be substituted.

10. For section 17, the following sections shall be substituted, namely:—

15

Subordination of Judicial Magistrates and Benches to Chief Judicial Magistrates and of Chief Judicial Magistrates and Assistant Sessions Judges to Sessions Judge.

“17. (1) All Judicial Magistrates appointed under subsections (2) and (3) of section 12 and all Benches constituted under section 15, shall, subject to the control of the Sessions Judge, be subordinate to the Chief Judicial Magistrate, and the Chief Judicial Magistrate may, from time to time, make rules or give special orders consistent with this Code as to the distribution of business among such Magistrates and Benches.

(2) All Chief Judicial Magistrates shall be subordinate to the Sessions Judge.

(3) All Assistant Sessions Judges shall be subordinate to the Sessions Judge in whose Court they exercise jurisdiction, and the Sessions Judge may, from time to time, make rules consistent with this Code as to the distribution of business among such Assistant Sessions Judges.

(4) The Sessions Judge may also, when he himself is unavoidably absent or incapable of acting, make provision for the disposal of any urgent application by an Additional or Assistant Sessions Judge, or, if there be no Additional or Assistant Sessions Judge, by the Chief Judicial Magistrate, and such Judge or Magistrate shall have jurisdiction to deal with any such application.

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**5** 17A. (1) All Executive Magistrates appointed under sub-section (1) of section 12, section 13 and section 14 shall be subordinate to the District Magistrate and every Executive Magistrate (other than a Sub-divisional Magistrate) exercising powers in a sub-division shall also be subordinate to the Sub-divisional Magistrate, subject, however, to the general control of the District Magistrate.

**10** (2) The District Magistrate may, from time to time, make rules or give special orders consistent with this Code as to the distribution of business among Executive Magistrates subordinate to him and as to allocation of business to an Additional District Magistrate.

**15** 17B. Courts of Session and Courts of Judicial and Executive Magistrates shall be Criminal Courts inferior to the High Court and Courts of Judicial and Executive Magistrates shall be Criminal Courts inferior to the Court of Session.".

**11** For sub-section (1) of section 29, the following sub-section shall be substituted, namely:—

**20** “(1) Subject to the other provisions of this Code, any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court:

**25** Provided that if the Court so mentioned is a Court specified in column (1) of the Table below, such offence shall be tried by the Court of the Judicial Magistrate specified against it in column (2) thereof:

#### TABLE

Name of Court specified in the law (1)	Court by which triable (2)
1. District Magistrate	Chief Judicial Magistrate,
2. Magistrate of the first class	Judicial Magistrate of the first class.
3. Sub-divisional Magistrate	Judicial Magistrate of the first class.
4. Magistrate of the second class	Judicial Magistrate of the second class.
5. Magistrate of the third class	Judicial Magistrate of the second class.
6. Magistrate (except where it occurs in any expression mentioned above).	Judicial Magistrate.”.

Subordi-  
nation of  
Executive  
Magis-  
trates.

Courts  
inferior  
to High  
Court and  
Court of  
Session.

12. In section 29B, for the words "a District Magistrate or a Chief Presidency Magistrate, or by any Magistrate specially empowered by the State Government", the words "a Chief Judicial Magistrate or any other Judicial Magistrate specially empowered by the State Government in consultation with the High Court" shall be substituted.

13. For section 30, the following section shall be substituted, namely:—

Offences  
punish-  
able with  
imprison-  
ment not  
exceeding  
seven  
years.

"30. Notwithstanding anything contained in section 28 or section 29, the State Government, in consultation with the High Court, may invest any Chief Judicial Magistrate or any other Judicial Magistrate of the first class with power to try as a Judicial Magistrate all offences not punishable with death or with imprisonment for life or with imprisonment for a term exceeding seven years:

15

Provided that no Chief Judicial Magistrate or Judicial Magistrate of the first class shall be invested with such powers unless he has, for not less than ten years, exercised as a Magistrate powers not inferior to those of a Magistrate of the first class:

20

Provided further that if any Judicial Magistrate of the first class has, prior to his appointment as such Magistrate, exercised the powers of an Assistant Sessions Judge, he may be invested with the powers under this section notwithstanding the fact that he has not exercised the powers of Magistrate of the first class for not less than ten years.".

14. In section 32,—

(a) in the marginal heading, for the word "Magistrates", the words "Judicial Magistrates" shall be substituted;

(b) in sub-section (1),—

30

(i) in the opening sentence, before the word "Magistrates", the word "Judicial" shall be inserted;

(ii) in clause (a). for the words "Courts of Presidency Magistrates and of Magistrates of the first class", the words "Courts of Judicial Magistrates of the first class" and in

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clause (b), for the words "Courts of Magistrates", the words "Courts of Judicial Magistrates" shall be substituted;

- (iii) clause (c) shall be omitted;
- 5 (c) in sub-section (2), for the words "any Magistrate", the words "any Judicial Magistrate" shall be substituted.

15. In section 33, in sub-section (1),—

- (i) in the marginal heading, for the word "Magistrates", the words "Judicial Magistrates" shall be substituted;
- 10 (ii) in the opening paragraph, for the words "any Magistrate", the words "any Judicial Magistrate" shall be substituted;
- (iii) in the proviso, in clause (b), for the words "by a Magistrate", the words "by a Judicial Magistrate" shall be substituted.

16. In the marginal heading of section 34, for the word "District", the word "Judicial" shall be substituted.

- 15 17. In section 36, after the words "District Magistrates", the words "Chief Judicial Magistrates", shall be inserted; and for the words "Magistrates of the first, second and third classes", the words "Judicial and Executive Magistrates other than special Executive Magistrates" shall be substituted.

- 20 18. For sections 37 and 38, the following sections shall be substituted, namely:—

"37. In addition to the ordinary powers,—

- 25 (i) the State Government, in consultation with the High Court, may invest any Judicial Magistrate with any of the powers specified in Part IA of Schedule IV;
- (ii) a Chief Judicial Magistrate may invest any Judicial Magistrate within his local jurisdiction with the powers specified in Part IB of Schedule IV;
- 30 (iii) the State Government may invest any Executive Magistrate with any of the powers specified in Part IIA of Schedule IV; and
- (iv) a District Magistrate may invest any Executive Magistrate within his local jurisdiction with the powers specified in Part IIB of Schedule IV.

Additional powers conferable on Magistrates.

**Exercise  
of powers  
under  
section 37  
by Chief  
Judicial  
Magistrate  
or District  
Magistrate  
to be sub-  
ject to  
control of  
High  
Court or  
State Gov-  
ernment.**

**Powers on  
Judicial  
Magis-  
trates to  
be con-  
ferred in  
consulta-  
tion with  
High  
Court.**

38. The power conferred on the Chief Judicial Magistrate under clause (ii) of section 37 shall be exercised subject to the control of the High Court and the State Government and the power conferred on the District Magistrate under clause (iv) of that section shall be exercised subject to the control of the State Government. 5

38A. Whenever, under any provisions of this Code or of any other law for the time being in force relating to any of the matters specified in Lists II and III of the Seventh Schedule to the Constitution, any judicial powers are to be conferred on a Sessions Judge, or an Additional or Assistant Sessions Judge or a Chief Judicial Magistrate or any other Judicial Magistrate or any such Magistrate is to be specially empowered to exercise such powers the orders conferring such powers or empowering the exercise of such powers shall be made by the State Gov- 15 ernment in consultation with the High Court notwithstanding that such provision may not expressly so provide.

*Explanation.—For the purposes of this section, the question whether any powers are judicial shall be decided by the State Government in consultation with the High Court and such 20 decision shall be final.”.*

19. In sub-section (1) of section 39, for the words “the State Government”, the words “the State Government, in consultation with the High Court, where necessary,” shall be substituted.

20. In section 40, for the words “State Government”, occurring 25 for the second time, the words “State Government, in consultation with the High Court, where necessary,” shall be substituted.

21. In section 41,—

(i) in sub-section (1), after the words “The State Govern-  
ment”, the words “, in consultation with the High Court, where 30  
necessary,” shall be inserted; and .

(ii) for sub-section (2), the following sub-section shall be substituted, namely:—

5       “(2) Any powers conferred by the Chief Judicial Magistrate or the District Magistrate may be withdrawn by him.”.

22. In section 57,—

(i) in sub-section (2), for the words “a Magistrate”, the words “a Judicial Magistrate having jurisdiction” shall be substituted;

10       (ii) in sub-section (3), for the word “Magistrate”, the words “Judicial Magistrate” shall be substituted.

23. In section 63, for the word “Magistrate”, the words “Magistrate having jurisdiction” shall be substituted.

24. For sub-section (1) of section 78, the following sub-section 15 shall be substituted, namely:—

20       “(1) A District Magistrate or a Chief Judicial Magistrate or any other Judicial Magistrate of the first class or a Sub-divisional Magistrate may direct a warrant to any landholder, farmer or manager of land within the area of his jurisdiction for the arrest of any escaped convict, proclaimed offender or person who has been accused of a non-bailable offence, and who has eluded pursuit.”.

25. In section 88,—

(a) in sub-section (2), after the words “District Magistrate”, the words “or Chief Judicial Magistrate” shall be inserted;

(b) in sub-section (6B), after the words “District Magistrate”, the words “or Chief Judicial Magistrate” shall be inserted; and

30       (c) for the proviso to sub-section (6C), the following proviso shall be substituted, namely:—

35       “Provided that if it is preferred or made in the Court of a District Magistrate or Chief Judicial Magistrate, he may make it over for disposal to any Magistrate subordinate to him, and such Magistrate shall have all the powers and jurisdiction in respect of such claim or objection as if the order of attachment had been issued by such Magistrate and the claim or objection had been originally preferred or made before him.”.

26. In section 95, after the words "District Magistrate" wherever they occur, the words "Chief Judicial Magistrate," shall be inserted.

27. In sub-section (2) of section 96, after the words "District Magistrate", the words "or Chief Judicial Magistrate" shall be inserted. 5

28. In section 98, after the words "District Magistrate," wherever they occur, the words "Chief Judicial Magistrate," shall be inserted.

29. In sub-section (1) of section 106, for the words "Court of a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate or a Magistrate", the words "Court of a Chief Judicial Magistrate or any other Judicial Magistrate" shall be substituted. 10

30. In sections 107, 108 and 109, for the words "Magistrate of the first class" and in section 110, for the words "a Magistrate of the first class", the words "an Executive Magistrate of the first class" shall be substituted. 15

31. In section 124,—

(i) for the words "Chief Presidency", wherever they occur, the words "Chief Judicial" shall be substituted;

(ii) in sub-section (1), for the words "under this Chapter", 20 the words and figures "under section 118 or, as the case may be, under section 106" shall be substituted; and

(iii) in sub-section (2), for the words "under this Chapter", the words and figures "under section 106 or, as the case may be, under section 118," shall be substituted. 25

32. For section 125, the following section shall be substituted, namely:—

"125. The Chief Judicial Magistrate may, at any time, for sufficient reasons to be recorded in writing, cancel any bond for keeping the peace executed under section 106 and the District 30 Magistrate may at any time likewise cancel any bond for keeping the peace or for good behaviour executed under section 118 by order of any Court in his district not superior to his Court".

Power of  
Chief  
Judicial  
Magistrate  
to cancel  
any bond  
for keep-  
ing the  
peace and  
of District  
Magistrate  
to cancel  
any bond  
for keep-  
ing the  
peace or  
for good  
behaviour.

33. In section 126,—

5                   (i) in sub-section (1), for the words "to a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class", the words and figures "to the Court by which an order to give security was made under section 106 or section 118" shall be substituted; and

(ii) for sub-section (2), the following sub-section shall be substituted, namely:—

10                  (2) On such application being made, the Court shall issue summons or warrant, as it thinks fit, requiring the person for whom such surety is bound to appear or to be brought before it".

15                  34. In sections 127, 128, 129 and 132, for the word "Magistrate", the words "Executive Magistrate" shall be substituted; in sections 130 and 131, for the words "a Magistrate", the words "an Executive Magistrate" and in section 131, for the words "no Magistrate", the words "no Executive Magistrate" shall be substituted.

35. In section 133,—

20                  (i) in the opening paragraph of sub-section (1) and in sub-section (2), for the words "a Magistrate", the words "an Executive Magistrate" shall be substituted; and

(ii) in the closing paragraph of sub-section (1), for the words "Magistrate of the first or second class", the words "Executive Magistrate" shall be substituted.

25                  36. In section 143, for the words "any other Magistrate", the words "any other Executive Magistrate" shall be substituted.

37. In sub-section (1) of section 144, for the words and brackets "any other Magistrate (not being a Magistrate of the third class)", the words "any other Executive Magistrate" shall be substituted.

30                  38. In sub-section (1) of section 145 and sub-section (1) of section 147, for the words "Magistrate of the first class", the words "Executive Magistrate of the first class" shall be substituted.

35                  39. In sub-section (1) of section 155, the words "having power to try such case or commit the same for trial" shall be inserted at the end.

40. For sub-section (1) of section 164, the following sub-section shall be substituted, namely:—

5

“(1) Any such Executive Magistrate of the first class or of the second class (not being a police officer) as may be specially empowered in this behalf by the State Government, and any Judicial Magistrate of the first class or any Judicial Magistrate of the second class specially empowered in this behalf by the State Government in consultation with the High Court, may record any statement or confession made to him in the course of an investigation under this Chapter or under any other law for ~~10~~ the time being in force or at any time afterwards before the commencement of the inquiry or trial.”.

41. In section 167,—

(i) for the proviso to sub-section (2), the following proviso shall be substituted, namely:—

15

“Provided that no Executive Magistrate of the second class not specially empowered in this behalf by the State Government, and no Judicial Magistrate of the second class not specially empowered in this behalf by the State Government in consultation with the High Court, shall authorise ~~20~~ detention in the custody of the police.”; and

(ii) for sub-section (4), the following sub-section shall be substituted, namely:—

“(4) If such order is given by an Executive Magistrate other than the District Magistrate or Sub-divisional Magistrate he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is immediately subordinate and if such order is given by a Judicial Magistrate other than the Chief Judicial Magistrate, he shall forward a copy of his order, with his reasons for making it, to ~~30~~ the Chief Judicial Magistrate.”.

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42. In sub-section (3) of section 170, for the words “District Magistrate or Sub-divisional Magistrate”, the words “Chief Judicial Magistrate” shall be substituted.

43. In sub-section (5) of section 174, for the words “Magistrate of the first class, and any Magistrate”, the words “Executive Magistrate of the first class, and any other Executive Magistrate” shall be substituted.

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**44.** Section 176A which applies only to the Union territory of the Laccadive, Minicoy and Aminidivi Islands shall be omitted.

**45.** In sub-section (1) of section 186, for the words "a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate, or, if he is specially empowered in this behalf by the State Government, a Magistrate of the first class", the words "a District Magistrate, a Sub-divisional Magistrate, or, if he is specially empowered in this behalf by the State Government, an Executive Magistrate of the first class, or, if he is specially empowered in this behalf by the State Government, in consultation with the High Court, a Judicial Magistrate of the first class" shall be substituted.

**46.** In sub-section (1) of section 187, for the words "a Presidency Magistrate or District Magistrate, such Magistrate shall send the person arrested to the District or Sub-divisional Magistrate", the words "a District Magistrate or Chief Judicial Magistrate, such Magistrate shall send the person arrested to the District or Sub-divisional Magistrate, or, as the case may be, to the Chief Judicial Magistrate" shall be substituted.

**47.** In section 190.—

**20** (i) in sub-section (1), for the words, "any Presidency Magistrate, District Magistrate or Sub-divisional Magistrate, and any other Magistrate", the words "any Chief Judicial Magistrate, and any other Judicial Magistrate" shall be substituted;

**25** (ii) in sub-section (2), for the words "The State Government, or the District Magistrate subject to the general or special orders of the State Government, may empower any Magistrate", the words "The State Government, in consultation with the High Court, or the Chief Judicial Magistrate, subject to the general or special orders of the High Court, may empower any other Judicial Magistrate" shall be substituted; and

**30** (iii) in sub-section (3), for the words "State Government may empower any Magistrate", the words "State Government, in consultation with the High Court, may empower any Judicial Magistrate" shall be substituted.

**35** **48.** In section 192,—

(i) in sub-section (1), for the words "Any Chief Presidency Magistrate, District Magistrate or Sub-divisional Magistrate", the words "Any Chief Judicial Magistrate" shall be substituted; and

(ii) in sub-section (2), for the words "District Magistrate", the words "Chief Judicial Magistrate" shall be substituted.

49. In sub-section (2) of section 193, for the words "the State Government", the words "the State Government, in consultation with the High Court," shall be substituted. 5

50. In section 196B, for the words "Chief Presidency Magistrate", the words "Chief Judicial Magistrate" shall be substituted.

51. In sub-section (1) of section 206, for the words and brackets "Any Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class, or any Magistrate (not being a Magistrate of the third class) empowered in this behalf by the State Government", the words "Any Chief Judicial Magistrate or a Judicial Magistrate of the first class or any Judicial Magistrate of the second class empowered in this behalf by the State Government, in consultation with the High Court," shall be substituted. 15

52. In section 249, for the words "a Presidency Magistrate, a Magistrate of the first class, or, with the previous sanction of the District Magistrate, any other Magistrate", the words "a Judicial Magistrate of the first class, or, with the previous sanction of the Chief Judicial Magistrate, any Judicial Magistrate of the second class" shall be substituted. 20

53. In sub-section (3) of section 250, the words "or third" shall be omitted.

54. In the opening paragraph of sub-section (1) of section 260, for clauses (a), (b) and (c), the following clauses shall be substituted, 25 namely:—

"(a) the Chief Judicial Magistrate,

(b) any Judicial Magistrate of the first class specially empowered in this behalf by the State Government, in consultation 30 with the High Court, and

(c) any Bench of Judicial Magistrates invested with the powers of a Judicial Magistrate of the first class and specially empowered in this behalf by the State Government in consultation with the High Court.". 35

55. In section 261,—

(i) in the marginal heading, for the words "Bench of Magistrates", the words "Bench of Judicial Magistrates" shall be substituted;

- (ii) in the opening paragraph, for the words "State Government may confer on any Bench of Magistrates invested with the powers of a Magistrate of the second or third class", the words "State Government, in consultation with the High Court, may confer on any Bench of Judicial Magistrates invested with the powers of a Judicial Magistrate of the second class" shall be substituted.
- 5        56. In section 263, for the words "Bench of Magistrates", the words "Bench of Judicial Magistrates" and for the words "the State Government", the words "the High Court" shall be substituted.
- 10      57. In sub-section (2) of section 265, for the words "The State Government may authorise any Bench of Magistrates", the words "The State Government, in consultation with the High Court, may authorise any Bench of Judicial Magistrates" shall be substituted.
- 15      58. In sub-section (1) and (2) of section 269, after the words "State Government", the words "in consultation with the High Court" shall be inserted.
- 20      59. In section 337, in sub-section (1),—
- (i) in the opening paragraph, for the words "a Presidency Magistrate, a Sub-divisional Magistrate", the words "the Chief Judicial Magistrate" shall be substituted;
- (ii) for the proviso, the following proviso shall be substituted, namely:—
- "Provided that where the offence is under inquiry or trial, no Magistrate of the first class other than the Chief Judicial Magistrate shall exercise the power hereby conferred unless he is the Magistrate making the inquiry or holding the trial, and, where the offence is under investigation, no Magistrate of the first class other than the District Magistrate or the Chief Judicial Magistrate shall exercise the power unless he is the Judicial Magistrate having jurisdiction in a place where the offence might be inquired into or tried and the sanction of the Chief Judicial Magistrate has been obtained to the exercise thereof."
- 25      60. In section 338, for the words "District Magistrate", the words "Chief Judicial Magistrate" shall be substituted.
- 30      61. In sub-section (1) of section 346, after the words "District Magistrate", the words "or the Chief Judicial Magistrate, as the case may be," shall be inserted.

## 62. In section 349,—

(i) in sub-section (1),—

(a) for the words “a Magistrate of the second or third class”, the words “a Judicial Magistrate of the second class” shall be substituted; and 5

(b) for the words “District Magistrate or Sub-divisional Magistrate”, the words “Chief Judicial Magistrate” shall be substituted; and

(ii) in sub-section (1A), for the words “District Magistrate or Sub-divisional Magistrate”, the words “Chief Judicial Magis- 10 trate” shall be substituted.

## 63. For section 373, the following section shall be substituted, namely:—

Court of Session to send copy of finding and sentence to District Magistrate and Chief Judicial Magis-  
trate.

“373. In cases tried by the Court of Session, the Court shall forward a copy of its finding and sentence (if any) to the District Magistrate and the Chief Judicial Magistrate within the local limits of whose jurisdiction the trial was held.”. 15

64. In section 380, for the words “Magistrate of the first class or a Sub-divisional Magistrate”, the words “Judicial Magistrate of the first class” shall be substituted. 20

## 65. For section 406A, the following sections shall be substituted, namely:—

Appeal from order refusing to accept or rejecting a surety.

“406A. Any person aggrieved by an order refusing to accept or rejecting a surety under section 122 may appeal against such order,— 25

(a) if made by the District Magistrate or the Chief Judicial Magistrate, to the Court of Session;

(b) if made by an Executive Magistrate other than the District Magistrate, to the District Magistrate; and

(c) if made by a Judicial Magistrate other than the Chief Judicial Magistrate, to the Chief Judicial Magistrate. 30

406B. The District Magistrate or the Chief Judicial Magistrate may transfer any appeal presented to him under section 406A to an Additional District Magistrate or to the Additional Chief Judicial Magistrate, as the case may be, and such Additional District Magistrate or Additional Chief Judicial Magistrate may hear and dispose of the appeal.”.

Transfer  
of appeal  
to Addi-  
tional  
District  
Magistrate  
or to  
Additional  
Chief  
Judicial  
Magis-  
trate.

66. In section 407 which applies only to the Union territory of the Laccadive, Minicoy and Amindivi Islands,—

- 10 (i) for the words “District Magistrate”, wherever they occur, the words “Chief Judicial Magistrate” shall be substituted;
- (ii) in sub-section (1), for the words “Magistrate of the second or third class”, the words “Judicial Magistrate of the second class” shall be substituted;
- 15 (iii) in sub-section (2), for the words “Magistrate of the first class”, the words “Judicial Magistrate of the first class” shall be substituted.

67. In section 408,—

- 20 (i) as it applies to any Union territory other than the Union territory of the Laccadive, Minicoy and Amindivi Islands, for the words and figures “a District Magistrate or any other Magistrate, or any person sentenced under section 349 or in respect of whom an order has been made or a sentence has been passed under section 380 by any Magistrate”, the words and figures “or a Judicial Magistrate or any person sentenced under section 349 or in respect of whom an order has been made or a sentence has been passed under section 380 by a Judicial Magistrate” shall be substituted;
- 25 (ii) as it applies to the Union territory of the Laccadive, Minicoy and Amindivi Islands, for the words and figures “a District Magistrate or other Magistrate of the first class, or any person sentenced under section 349 or in respect of whom an order has been made or a sentence has been passed under section 380 by any Magistrate”, the words and figures “or a Judicial Magistrate of the first class or any person sentenced under section 349 or in respect of whom an order has been made or a sentence has been passed under section 380 by a Judicial Magistrate” shall be substituted.

68. In section 409,—

(a) as it applies to the Union territory of the Laccadive, Minicoy and Amindivi Islands, in the proviso, for the words "State Government", the words "State Government, in consultation with the High Court," shall be substituted; 5

(b) as it applies to the Union territories other than the Union territory of the Laccadive, Minicoy and Amindivi Islands,—

(i) in the proviso to sub-section (1), the words "or third" shall be omitted; and

(ii) in sub-section (2), for the words "State Government", the words "State Government, in consultation with the High Court," shall be substituted. 10

69. In section 412, for the words "Magistrate of the first class", the words "Judicial Magistrate of the first class" shall be substituted.

70. In section 413, for the words "or District Magistrate or other Magistrate", the words "or Chief Judicial Magistrate or other Judicial Magistrate" shall be substituted. 15

71. In sub-section (1) of section 425, for the words "District Magistrate", wherever they occur, the words "Chief Judicial Magistrate" shall be substituted, and the words "and a copy thereof shall 20 be forwarded to the District Magistrate" shall be inserted at the end.

72. In sub-section (1) of section 428, for the word "Magistrate", wherever it occurs, the words "Judicial Magistrate" shall be substituted.

73. For section 435, the following section shall be substituted, 25 namely:—

"435. (1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within the local limits of its or his jurisdiction and any Chief Judicial Magistrate may call for and examine the record of any proceedings before any Judicial Magistrate under his jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court or such Magistrate, as the case 35 may be, and may, when calling for such record, direct that the execution of any sentence or order be suspended and, if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record." 30

(2) The District Magistrate or any Sub-divisional Magistrate empowered by the State Government in this behalf, may call for and examine the record of any proceeding before any Subordinate Executive Magistrate for the purpose of satisfying himself as to the correctness, legality or propriety of any order recorded or passed, and as to the regularity of any proceedings of such Sub-ordinate Magistrate and may, when calling for such record, direct that the execution of any order be suspended and, if the person is in confinement, that he be released on bail or on his own bond pending the examination of the record.

(3) If any Sub-divisional Magistrate acting under sub-section (2) considers that any such proceeding or order is illegal or improper or that any such proceeding is irregular, he shall forward the record, with such remarks thereon as he thinks fit, to the District Magistrate.

(4) The High Court may call for and examine the record of any proceeding under section 118, 122, 143, 144 or 145, notwithstanding the fact that such proceeding was before an Executive Magistrate.

(5) If an application in respect of any proceeding before any Judicial Magistrate other than the Chief Judicial Magistrate has been made under sub-section (1) either to the Sessions Judge or the Chief Judicial Magistrate, no further application shall be entertained by the other of them and if an application in respect of any proceeding before any Executive Magistrate has been made to the Sessions Judge under sub-section (1) or to the District Magistrate under sub-section (2), no further application shall be entertained by the other of them.”.

74. Section 436 shall be re-numbered as sub-section (1) thereof and—

(i) in sub-section (1) as so re-numbered—

(a) for the words “District Magistrate”, wherever they occur, the words “Chief Judicial Magistrate” shall be substituted;

(b) in the proviso, for the word “section”, the word “sub-section” shall be substituted:

(ii) after sub-section (1) as so re-numbered, the following sub-section shall be inserted, namely:—

“(2) On examining any record under section 435 or otherwise, the District Magistrate may direct any Sub-di-

sional Magistrate by himself or by any other Magistrate subordinate to him to make, and the Sub-divisional Magistrate may himself make or direct any Subordinate Magistrate to make further inquiry into any proceeding in which an order of release or discharge has been made under section 119:

5

Provided that no District Magistrate shall make any direction under this sub-section for further inquiry into the case of any person who has been released or discharged unless such person has had an opportunity of showing cause why such direction should not be made.”.

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75. In section 437, for the words “District Magistrate”, wherever they occur, the words “Chief Judicial Magistrate” shall be substituted.

76. In section 438,—

(i) in sub-section (1), for the words “District Magistrate”, the words “Chief Judicial Magistrate” shall be substituted; and 15

(ii) after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) The District Magistrate, on examining under section 435 or otherwise the record of any proceeding,—

(a) shall, if such proceeding is in respect of an order under section 118, 122, 143, 144 or 145 and if he thinks that the order made in such proceeding should be reversed or altered, report for the orders of the High Court the result of such examination;

(b) may, if such proceeding is in respect of an order made under any other section, exercise, subject to the 25 provisions of sub-section (2) of section 436, any of the powers conferred on a Court of appeal by sections 423, 426, 427 and 428.”.

77. In sub-section (3) of section 439, for the words “a Magistrate of the first class”, the words “a Judicial Magistrate of the first class” 30 shall be substituted.

78. In section 479, for the words “Presidency Magistrate, District Magistrate or other Magistrate”, the words “Chief Judicial Magistrate or any other Judicial Magistrate” shall be substituted.

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79. In sub-section (1) of section 488, for the words “District Magistrate, a Presidency Magistrate, a Sub-divisional Magistrate or a Magistrate”, the words “Chief Judicial Magistrate or any other Judicial Magistrate” shall be substituted.

80. In sub-section (2) of section 512 for the words "any Magistrate of the first class", the words "any Judicial Magistrate of the first class" shall be substituted.

81. For section 515, the following section shall be substituted,  
5 namely:—

"515. All orders under section 514 shall be appealable—

Appeal  
from, and  
revision  
of, orders  
under sec-  
tion 514.

(i) to the District Magistrate, if passed by an Executive Magistrate; and

10 (ii) to the Chief Judicial Magistrate, if passed by a Judicial Magistrate,

or if not so appealed, may be revised by the District Magistrate or, as the case may be, by the Chief Judicial Magistrate.".

82. In section 524,—

15 (i) in sub-section (1), for the words "a Magistrate of the first class", the words "an Executive Magistrate of the first class" shall be substituted; and

(ii) in sub-section (2), for the words "to the Court to which appeals against sentences of the Court passing such order would lie", the words "to the Sessions Judge" shall be substituted.

20 83. In section 528,—

(i) in sub-section (2),—

25 (a) for the marginal heading, the following marginal heading shall be substituted, namely:—

"Chief Judicial Magistrate may withdraw or refer cases."; and

(b) for the words "Any Chief Presidency Magistrate, District Magistrate or Sub-divisional Magistrate", the words "The Chief Judicial Magistrate" shall be substituted; and

30 (ii) after sub-section (2), the following sub-sections shall be inserted, namely:—

35 "(2A) The State Government, in consultation with the High Court, may authorise the Chief Judicial Magistrate to withdraw from any Magistrate subordinate to him either such classes of cases as he thinks proper, or particular classes of cases.

Power to  
authorise  
Chief  
Judicial  
Magistrate  
to with-  
draw  
classes of  
cases.

District  
Magistrate  
may with-  
draw or  
refer  
cases.

(2B) Any District Magistrate may withdraw any case from, or recall any case which he has made over to, any Magistrate subordinate to him, and may inquire into such case himself, or refer it for inquiry to any other such Magistrate competent to inquire into the same.".

5

84. In sub-section (2) of section 559, for the words "the Chief Presidency Magistrate in a Presidency-town, and the District Magistrate outside such towns", the words "the Chief Judicial Magistrate in the case of Judicial Magistrates and the District Magistrate in the case of Executive Magistrates" shall be substituted.

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85. In section 561, for the words "a Chief Presidency Magistrate or District Magistrate", wherever they occur, the words "a Chief Judicial Magistrate" shall be substituted.

86. In the proviso to sub-section (1) of section 562,—

(i) for the words "Magistrate of the third class, or a Magistrate of the second class not specially empowered by the State Government", the words "Judicial Magistrate of the second class not specially empowered by the State Government in consultation with the High Court" shall be substituted; and

(ii) for the words "Magistrate of the first class or Sub-divisional Magistrate", the words "Judicial Magistrate of the first class" shall be substituted.

87. In section 565,—

(i) in sub-section (1), for the words "Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate", the words "Chief Judicial Magistrate or any other Judicial Magistrate" shall be substituted;

(ii) in sub-section (3), after the words "State Government", the words ", in consultation with the High Court," shall be inserted;

30

(iii) in sub-section (5), for the word "Magistrate", the words "Judicial Magistrate" shall be substituted.

88. In Schedule II, in column 3,—

(i) for the word "Magistrate", wherever it occurs except in the expression "Presidency Magistrate", the words "Judicial Magistrate", and for the words "Any Magistrate", wherever they occur, the words "Any Judicial Magistrate" shall be substituted;

(ii) for the entry against section 124A, the following entry shall be substituted, namely:—

"Court of Session, Chief Judicial Magistrate or any other judicial Magistrate of the first class specially empowered by

40

the State Government, in consultation with the High Court, in that behalf"; and

5 (iii) in the entry relating to section 376, for the words "Chief Presidency Magistrate or District Magistrate", the words "or Chief Judicial Magistrate" shall be substituted.

89. For Schedules III and IV, the following Schedules shall be substituted, namely:—

### "SCHEDULE III

(See section 36)

#### 10 ORDINARY POWERS OF STATE MAGISTRATES

##### I.—*Ordinary powers of a Judicial Magistrate of the second class*

(1) Power to arrest or direct the arrest of, and to commit to custody, a person committing an offence in his presence, section 64.

15 (2) Power to arrest, or direct the arrest in his presence of, an offender, section 65.

(3) Power to endorse a warrant, or to order the removal of an accused person arrested under warrant, sections 83, 84 and 86.

(4) Power to issue proclamations in cases judicially before him. section 87.

20 (5) Power to attach and sell property and to dispose of claims or objections to attached property, section 88.

(6) Power to restore attached property, section 89.

(7) Power to require search to be made for letters and telegrams, section 95.

25 (8) Power to issue search warrant, section 96.

(9) Power to endorse a search warrant and order delivery of thing found, section 99.

30 (10) Power to order the police to investigate an offence in cases in which the Magistrate has jurisdiction to try or commit for trial, section 155.

(11) Power to authorise detention, not being detention in the custody of the police, of a person during a police investigation, section 167.

35 (12) Power to postpone issue of process and to inquire into a case or direct investigation, section 202.

- (13) Power to detain an offender found in Court, section 351.
- (14) Power to take evidence on commission, section 503.
- (15) Power to recover forfeited bond for appearance before Magistrate's Court, section 514, and to require fresh security, section 514A. 5
- (16) Power to make order as to custody and disposal of property pending inquiry or trial, section 516A.
- (17) Power to make order as to disposal of property, section 517.
- (18) Power to sell property of a suspected character, section 525.
- (19) Power to require affidavit in support of application, section 10 539A.
- (20) Power to make local inspection, section 539B.
- II.—Ordinary powers of a Judicial Magistrate of the first class*
- (1) The ordinary powers of a Judicial Magistrate of the second class. 15
- (2) Power to direct warrant to landholders, section 78.
- (3) Power to issue search warrant, otherwise than in due course of an inquiry, section 98.
- (4) Power to issue search warrant for discovery of persons wrongfully confined, section 100. 20
- (5) Power to require execution of a bond, section 106.
- (6) Power to discharge sureties, section 126A.
- (7) Power to record statements and confessions during a police investigation, section 164.
- (8) Power to authorise detention of a person in the custody of 25 the police during a police investigation, section 167.
- (9) Power to commit for trial, section 206.
- (10) Power to stop proceedings when no complainant, section 249.
- (11) Power to tender pardon to accomplice during inquiry into 30 case by himself, section 337.
- (12) Power to make orders of maintenance, sections 488 and 489.
- (13) Power to recall case made over by him to another Magistrate, section 528(4).
- (14) Power to make order as to first offenders, section 562. 35

- (15) Power to order released convicts to notify residence, section 565.

*III.—Ordinary powers of a Chief Judicial Magistrate*

- (1) The ordinary powers of a Judicial Magistrate of the first class.
- 5 (2) Power to try juvenile offenders, section 29B.
- (3) Power to require delivery of letters, telegrams, etc., section 95.
- (4) Power to issue search warrants for documents in custody of postal or telegraph authorities, section 96.
- 10 (5) Power to release persons imprisoned for failure to give security under section 106, section 124.
- (6) Power to cancel any bond for keeping the peace under section 106, section 125.
- (7) Power to order police investigation into a cognizable case, section 156.
- (8) Power to issue process for a person within local jurisdiction who has committed an offence outside the local jurisdiction, section 186.
- (9) Power to entertain complaints, section 190.
- 20 (10) Power to receive police reports, section 190.
- (11) Power to entertain cases without complaint, section 190.
- (12) Power to transfer cases to a Subordinate Magistrate, section 192.
- (13) Power to order preliminary investigation by a police officer not below the rank of an Inspector in certain cases, section 196B.
- 25 (14) Power to try summarily, section 260.
- (15) Power to tender pardon to accomplice at any stage of a case, section 337.
- (16) Power to pass sentence on proceedings recorded by a Subordinate Magistrate, section 349.
- 30 (17) Power to call for records, section 435.

- (18) Power to order inquiry, section 436.
- (19) Power to order commitment, section 437.
- (20) Power to report case to High Court, section 438.
- (21) Power to withdraw cases and to try or refer them for trial, section 528. 5

*IV.—Ordinary powers of an Executive Magistrate of the second class*

- (1) Power to arrest or direct the arrest of, and to commit to custody, a person committing an offence in his presence, section 64.
- (2) Power to arrest, or direct the arrest in his presence of, an offender, section 65. 10
- (3) Power to endorse a warrant, or to order the removal of an accused person arrested under a warrant, sections 83, 84 and 86.
- (4) Power to issue proclamations, section 87.
- (5) Power to attach and sell property, section 88.
- (6) Power to restore attached property, section 89. 15
- (7) Power to require search to be made for letters and telegrams, section 95.
- (8) Power to issue search warrants, section 96.
- (9) Power to endorse a search warrant and order delivery of thing found, section 99. 20
- (10) Power to command unlawful assembly to disperse, section 127.
- (11) Power to use civil force to disperse unlawful assembly, section 128.
- (12) Power to require military force to be used to disperse lawful assembly, section 130. - 25
- (13) Power to authorise detention not being detention in the custody of the police, of a person during a police investigation, section 167.
- (14) Power to take evidence on commission, section 503. 30

(15) Power to recover forfeited bond for appearance before Magistrate's Court, section 514 and to require fresh security, section 514A.

(16) Power to make order as to disposal of property, section 517.

5 (17) Power to sell property of a suspected character, section 525.

V.—*Ordinary powers of an Executive Magistrate of the first class*

(1) The ordinary powers of an Executive Magistrate of the second class.

10 (2) Power to issue search warrant otherwise than in course of an inquiry, section 98.

(3) Power to issue search warrant for discovery of persons wrongfully confined, section 100.

(4) Power to require security to keep the peace, section 107.

(5) Power to require security for good behaviour, section 109.

15 (6) Power to discharge sureties, section 126A.

(7) Power to make orders as to local nuisances, section 133.

(8) Power to make orders, etc., in possession cases, sections 145, 146 and 147.

20 (9) Power to authorise detention of a person in the custody of the police during a police investigation, section 167.

(10) Power to hold inquests, section 174.

VI.—*Ordinary powers of a Sub-divisional Magistrate*

(1) The ordinary powers of an Executive Magistrate of the first class.

25 (2) Power to direct warrants to land holders, section 78.

(3) Power to require security for good behaviour, section 110.

(4) Power to make orders prohibiting repetitions of nuisances, section 143.

(5) Power to make orders under section 144.

(6) Power to depute Subordinate Executive Magistrate to make local inquiry, section 148.

(7) Power to issue process for person within local jurisdiction who has committed an offence outside the local jurisdiction, section 186. 5

(8) Power to sell property alleged or suspected to have been stolen, etc., section 524.

#### VII.—*Ordinary powers of a District Magistrate*

(1) The ordinary powers of a Sub-divisional Magistrate.

(2) Power to require delivery of letters, telegrams, etc., section 10 95.

(3) Power to issue search warrants for documents in custody of postal or telegraph authorities, section 96.

(4) Power to require security for good behaviour, section 108.

(5) Power to discharge persons bound to keep the peace or to be 15 of good behaviour under section 118, section 124.

(6) Power to cancel bond for keeping the peace or to be of good behaviour under section 118, section 125.

(7) Power to order preliminary investigation by police officer not below the rank of Inspector in certain cases, section 196B. 20

(8) Power to tender pardon to accomplice at the stage of investigation, section 337.

(9) Power to call for and examine records, section 435(2).

(10) Power to direct Executive Magistrate to make further inquiry into proceedings, etc., section 436(2). 25

(11) Power to report case to High Court, section 438(3).

(12) Power to appoint person to be Public Prosecutor in particular case, section 492(2).

(13) Power to compel restoration of abducted female, section 552.

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## SCHEDULE IV

(See sections 37 and 38)

### ADDITIONAL POWERS WITH WHICH STATE MAGISTRATES MAY BE INVESTED

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#### PART I

##### A.—BY THE STATE GOVERNMENT IN CONSULTATION WITH THE HIGH COURT

*Powers with which a Judicial Magistrate of the first class may be  
invested*

- 10      (1) Power to try juvenile offenders, section 29B.
- (2) Power to issue process for person within local jurisdiction who has committed an offence outside the local jurisdiction, section 186.
- (3) Power to take cognizance of offences upon complaint, section 15 190.
- (4) Power to take cognizance of offences upon police reports, section 190.
- (5) Power to take cognizance of offences without complaint, section 190.
- 20      (6) Power to try summarily, section 260.
- (7) Power to try cases under section 124A of the Indian Penal Code.

*Powers with which a Judicial Magistrate of the second class may  
be invested*

- 25      (1) Power to try juvenile offenders, section 29B.
- (2) Power to record statements and confessions during a police investigation, section 164.
- (3) Power to authorise detention of a person in the custody of the police during a police investigation, section 167.
- 30      (4) Power to take cognizance of offences upon complaint, section 190.
- (5) Power to take cognizance of offences upon police reports, section 190.
- (6) Power to take cognizance of offences without complaint section 190.
- 35      120 Gof I—5.

- (7) Power to commit for trial, section 206.  
 (8) Power to make orders as to first offenders, section 562.

B.—BY THE CHIEF JUDICIAL MAGISTRATE

*Powers with which any Judicial Magistrate of the first class may be invested*

5

(1) Power to take cognizance of offences upon complaint, section 190.

(2) Power to take cognizance of offences upon police reports, section 190.

*Powers with which any Judicial Magistrate of the second class may be invested*

10

(1) Power to take cognizance of offences upon complaint, section 190.

(2) Power to take cognizance of offences upon police reports; section 190.

15

PART II

A.—BY STATE GOVERNMENT

*Powers with which a Sub-divisional Magistrate may be invested*

Power to call for records of inferior courts and to forward them to the District Magistrate, sub-sections (2) and (3) of section 435. 20

*Powers with which an Executive Magistrate of the first class may be invested*

(1) Power to require security for good behaviour in case of sedition, section 108.

(2) Power to require security for good behaviour, section 110. 25

(3) Power to make orders prohibiting repetitions of nuisances, section 143.

(4) Power to make orders under section 144.

(5) Power to issue process for person within local jurisdiction, who has committed an offence outside the local jurisdiction, section 186. 30

(6) Power to sell property alleged or suspected to have been stolen, etc., section 524.

*Powers with which an Executive Magistrate of the second class may be invested*

- (1) Power to make orders prohibiting repetitions of nuisances,  
section 143.
- 5 (2) Power to make orders under section 144.
- (3) Power to record statements and confessions during a police investigation, section 164.
- (4) Power to authorise detention of a person in the custody of the police during a police investigation, section 167.
- 10 (5) Power to hold inquests, section 174.

B.—BY THE DISTRICT MAGISTRATE

*Powers with which any Executive Magistrate of the first class may be invested*

- (1) Power to make orders prohibiting repetitions of nuisances,  
15 section 143.
- (2) Power to make orders under section 144.

*Powers with which any Executive Magistrate of the second class may be invested*

- (1) Power to make orders prohibiting repetitions of nuisances,  
20 section 143.
- (2) Power to make orders under section 144.
- (3) Power to hold inquests, section 174."

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### STATEMENT OF OBJECTS AND REASONS

The Bill seeks to separate the judiciary from the executive in the matter of administration of criminal law in all Union territories except Chandigarh where the Punjab Separation of Judicial and Executive Functions Act, 1964, is already in force, and has been brought forward in compliance with the directive principles of State policy embodied in article 50 of the Constitution. The object is sought to be achieved by amendment of the Code of Criminal Procedure, 1898 (*vide* clause 3 and the Schedule) by providing for the classification of the magistracy into Judicial and Executive Magistrates and for the appointment of members of the judiciary as Judicial Magistrates with the approval of the High Court. The Bill seeks to make changes in the various provisions of the Code with a view to giving effect to this classification and contains the necessary transitional and saving provisions. The Bill also sets out the respective cases other than those specifically covered by the proposed amendments to the Code, in which functions shall be exercisable under any law by Judicial and Executive Magistrates. Provision has been made in the Bill for the repeal of certain laws in force in areas transferred to Himachal Pradesh from Punjab so as to facilitate the enforcement of the scheme of the Bill in such areas. Power has also been taken for the removal of difficulties, if any, in giving effect to the provisions of the Bill after it becomes an Act.

Under section 21 of the Government of Union Territories Act, 1963, the Legislative Assembly of a Union territory cannot amend any law enacted by Parliament after the commencement of that Act though the subject matter of the law may be within the legislative competence of the Assembly. Clause 9 of the Bill seeks to confer on the Legislative Assembly of a Union territory the power to amend this law in its application to the Union territory if it is considered necessary to do so.

NEW DELHI;

Y. B. CHAVAN.

*The 14th March, 1968.*

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### PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE CONSTITUTION OF INDIA

[Copy of letter No. F. 13/1/67-UTL, dated the 22nd March, 1968 from Shri Y. B. Chavan, Minister of Home Affairs to the Secretary, Lok Sabha.]

The President having been informed of the subject matter of the Bill to provide for the separation of judicial and executive functions in Union territories, recommends, under clause (3) of article 117 of the Constitution, the consideration of the said Bill by the Lok Sabha.

### FINANCIAL MEMORANDUM

Section 12 of the Code of Criminal Procedure, 1898, as proposed to be amended by clause 3 of the Bill read with paragraph 5 of the Schedule, seeks to provide for the appointment of Executive Magistrates and for conferment of powers of any class of Judicial Magistrates on a person who is a Civil Judge or a member of the judicial service of a Union territory or a group of such territories. It also provides that during the first three years, persons who are members of a civil service in any State or Union territory and are or have been exercising the powers of a Magistrate in such territory or State, may be appointed as Judicial Magistrates.

Section 14 of the Code, as proposed to be amended by clause 3 read with paragraph 7 of the Schedule, makes provision for appointment of Special Executive Magistrates.

The scheme of the Bill, in effect initially involves the classification of the existing Magistrates in the Union territories where such officers are functioning, as Executive Magistrates and Judicial Magistrates. In certain cases Civil Judges will be vested with the powers of Judicial Magistrates. No additional expenditure would be involved in such cases, e.g., the Union territories of Dadra and Nagar Haveli and Goa, Daman and Diu. In the Union territories of the Andaman and Nicobar Islands, the Laccadive, Minicoy and Amindivi Islands and the hill areas of Manipur, separate Civil Judges will be appointed. They will also be vested with the powers of Judicial Magistrates. These appointments will involve extra expenditure. In the Union territories of Delhi, Himachal Pradesh, Pondicherry and Tripura, more Magistrates will have to be appointed. Necessary staff will also have to be appointed. There will be additional expenditure in this connection. Some non-recurring expenditure will also be incurred for the construction of buildings for the courts, residential accommodation for the new Civil Judges and Magistrates and the court staff, and for the purchase of law books, furniture, etc., for the courts. The additional expenditure in the

case of the various Union territories, if the Bill is enacted and brought into force in the Union territories, is estimated to be as follows:—

Union territory	Non-recurring expenditure	Recurring expenditure per annum
(in lakhs of rupees)		
<b>A. To be met from the Consolidated Fund of India :</b>		
Andaman and Nicobar Islands . . . . .	<b>5.27</b>	0.85
Delhi . . . . .	0.95	6.33
Laccadive, Minicoy and Amindivi Islands.	0.05	0.40
	<b>6.27</b>	<b>7.58</b>
<b>B. To be met from the Consolidated Funds of Union territories :</b>		
Himachal Pradesh . . . . .	0.60	2.97
Manipur . . . . .	0.35	1.71
Pondicherry . . . . .	..	0.07
Tripura . . . . .	0.06	0.42
	<b>1.01</b>	<b>5.17</b>

## BILL No. 16 OF 1968

*A Bill further to amend the Constitution of India.*

Be it enacted by Parliament in the Nineteenth Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (Amendment) Act, 1968.  
5       (2) It shall come into force at once.
2. In article 217 of the Constitution, in clause (1), for the words and figure "Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State, and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court, and shall hold office, in the case of

an additional or acting Judge, as provided in article 224, and in any other case, until he attains the age of sixty-two years;" the following shall be substituted, namely:—

5

"(1) Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal with the concurrence of the Chief Justice of India and, in the case of appointment of a Judge other than the Chief Justice of the High Court, on the recommendation of Chief Justice of the High Court, and shall hold office, in the case of an additional or acting Judge, as provided in article 224, and in any other case, until he attains <sub>10</sub> the age of sixty-two years."

### STATEMENT OF OBJECTS AND REASONS

Article 217 of the Constitution, as framed at present, encourages canvassing in the matter of appointment of High Court Judges. In the opinion of the Law Commission also, the present selections of the High Court Judges are unsatisfactory and that they are induced by executive influence. These selections appear to have been made out of consideration of political expediency or regional or communal sentiments. The prevalence of canvassing for Judgeships is a distressing development. It is also on record that some of the persons appointed have not been persons recommended by the Chief Justice of the High Courts. In actual practice, there have been rival recommendations of the Chief Justice and Chief Minister and the persons recommended by the Chief Minister were selected in preference to the panel recommended by the Chief Justice. This procedure places the Chief Justice in an extremely awkward position.

Having regard to the present trends and experience it is essential that the position of the Chief Justice should be strengthened. Instead of a mere consultation with the Chief Justice, we should have a Constitutional provision that appointment of Judges would be made exclusively on the recommendation of the Chief Justice. This provision would eliminate the executive influence in the matter of appointment of High Court Judges in future and thereby restore and increase the confidence of people in the integrity and independence of our judiciary.

Hence this Bill.

NEW DELHI;  
*The 16th February, 1968.*

M. NARAYAN REDDY

**BILL No. 38 OF 1968**

*A Bill to provide for participation of employees in the management of industrial or commercial undertakings in which they work and for other matters incidental thereto.*

Be it enacted by Parliament in the Nineteenth Year of the Republic of India as follows:—

**CHAPTER I****PRELIMINARY**

Short  
title,  
extent  
and  
com-  
mence-  
ment.

1. (1) This Act may be called the Labour (Participation in Management) Act, 1968.  
(2) It extends to the whole of India.  
(3) It shall come into force at once.

2. (1) In this Act, unless the context otherwise requires,—

Definitions.

(a) "concern" means and includes a trade, industry, business or undertaking by whatever name known or any distinct unit of the same.

5 (b) "employee" means a person working under an employer for the purpose of the employer's trade, business or undertaking, but shall not include—

(i) members of the supervisory or managerial staff; and

10 (ii) persons who have worked as aforesaid for less than 240 days in a calendar year preceding the year in which the question arises:

Provided that for the purpose of computing the said 240 days, paid holidays, weekly off-days, period of lay-off, period of leave sanctioned, any period of suspension and any period of leave the nature of which is in dispute before any competent authority at the time shall be included in the number of days worked.

20 (c) "employer" means a person or a body of persons by whatever name known, engaged in any trade, business or undertaking employing at least 20 persons excluding the supervisory or managerial staff, whether for profit or not, and includes a joint family, partnership, corporation, local authority and the Union and the State Governments:

25 Provided that it shall not include a local authority in its administrative capacity, the State and the Union Governments in exercise of their administrative, legislative and judicial functions.

30 (d) "Head of the concern" means the authority empowered to appoint and remove employees and to administer the day-to-day affairs of the concern.

(2) Expressions not defined in this Act shall have the meanings assigned to them in the Companies Act, 1956 and the Industrial Disputes Act, 1947, as the case may be.

## CHAPTER II

## THE ADMINISTRATIVE BODY

3. (1) Notwithstanding any law, rule, practice, agreement, custom or usage to the contrary, there shall be an Administrative Body for every concern or for a distinct unit of a concern consisting of:
- (a) as nearly as possible 2 per cent. of the employees working under the concern, not being less than 2 or more than 10 in any case, representing the employees; and
  - (b) an equal number of managerial or supervisory staff nominated by the Head of the concern, including himself, representing the employer.
- (2) At least 30 days before the commencement of the financial year following the date on which the Act comes into force and thereafter at least 30 days before the commencement of every alternate financial year, the Head of the concern shall notify the total number and the names of employees working and the names of the representatives of the employer nominated to serve on the Administrative Body, and call upon the employees by notice to choose their representatives. Such notice shall be prominently displayed on the notice boards of the concern, and shall be sent by registered post to the recognised union or unions, as the case may be, of employees working in the concern.
- (3) Within a week after the notification under sub-section (2), the employees may prefer objections to the number and list of employees notified by the Head of the concern, and such objections shall be disposed of by the Head of the concern within three days thereafter and he shall record his decision in writing.
- (4) Within three days after the last date for disposal of objections under sub-section (3), the Head of the concern shall by notification fix a date not being earlier than 7 days and later than 10 days from the date of notification for choosing the representatives of the employees. This notice shall be published in the same manner as laid down in sub-section (2).
- (5) On the date so appointed under sub-section (4) the employees may choose their representatives in such manner as may be prescribed.
- (6) The Administrative Body once constituted will function for two financial years and shall be reconstituted in accordance with the provisions of this section.

4. (1) The Head of the concern may nominate another person on the Administrative Body to fill in a vacancy caused by death, removal, resignation, long absence or transfer of a representative of the employer, and may also recall a representative of the employer in the prescribed manner and nominate another representative in his place.

Filling Vacancies  
in the Adminis-  
trative Body

(2) The employees may choose another representative on the Administrative Body to fill in a vacancy caused by death, removal, resignation or long absence of a representative of the employees, and may recall a representative of the employees and choose another representative in his place in such manner as may be prescribed.

5. (1) The Administrative Body shall meet at least once in every two months in the office of the concern and Head of the concern shall give at least a week's notice for holding the meeting.

Meetings and pro-  
ceeding,  
of the  
Adminis-

(2) The Head of the concern shall preside over the meetings of the Administrative Body, and in his absence, any other member chosen by the members present shall preside.

(3) All questions at any meeting of the Administrative Body shall be decided by a majority of votes of the members present and voting and each member present shall have one vote. The person who presides over the meeting shall also vote. Any member may record a note of dissent. In case of equality of votes the matter shall be left undecided and the provisions of section 7 shall apply thereto. Any member may record his views in respect of that matter.

(4) The quorum to constitute a meeting of the Administrative Body shall be one-fourth of the total number of members of the Administrative Body.

(5) The Head of the concern shall provide clerical and secretarial assistance to the Administrative Body and cause the records and proceedings of the Board to be properly maintained. As soon as possible after a meeting, a copy of the proceedings shall be forwarded to each member for his reference.

(6) The Head of the concern shall afford all reasonable facilities including leave with pay and travelling allowance, to the representatives coming from distant places of employment to attend the meetings of the Administrative Body.

Powers  
and  
functions  
of the  
Admi-  
nistrative  
Body.

6. (1) The Administrative Body shall have the power to examine and decide all matters connected with the administration and management of the concern, excepting the constitution, authority and functions of any body superior to the Head of the concern.

(2) All decisions taken by the Administrative Body shall be binding on the concern and shall be deemed to be the decision of the authority competent to take such decisions under any law, bye-law, rule, order, regulation, notification, memorandum or articles of association.

(3) The matters referred to in sub-section (1) may relate to— 10

(a) all proposals for changing the conditions of service or employment of the employees;

(b) all proposals for punishment of employees;

(c) all proposals for closure or retrenchment;

(d) all matters of importance affecting the productive capacity 15 and financial stability of the concern;

(e) all proposals for introduction of new products or methods of production; and

(f) such other matters which the Head of the concern desires to place before it or of which any member has given previous notice 20

Matters  
left  
undecided  
by the  
Adminis-  
trative  
Body

7. (1) Whenever any matter mentioned in the Schedule to this Act is left undecided under sub-section (3) of section 5, the matter shall be considered to be an industrial dispute and on the representation made by any member of the Administrative Body, the appropriate Government shall refer the dispute to the Industrial Tribunal or Labour Court, as the case may be, for disposal under the Industrial Disputes Act, 1947. 25

14 of 1947

(2) Any other matter left undecided under sub-section (3) of section 5 shall be placed by the Head of the concern before a body 30 superior to the Head of the concern together with all the views recorded in the Administrative Body in respect of the matter.

### CHAPTER III

#### MISCELLANEOUS

Power  
Rules

8. (1) The Central Government or the appropriate State Government may, by notification in the Official Gazettes, make rules for carrying out the purposes of the Act. 35

(2) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament or House or Houses of the Legislature of the State, as the case may be, while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the House or both Houses agree in making any modification in the rule or the House or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

9. The provisions of this Act shall be deemed to have been incorporated in the Agreements, Memoranda of Association, Articles of Association and other instruments governing a concern, and in case of any conflict between this Act and the provisions contained in the said instruments, the provisions of this Act shall prevail.

Incorporation of provisions of this Act in instruments of the concern.

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**SCHEDULE**

[See Section 7]

1 Conditions of service of the employees including wages, dearness allowance, dress, housing and other amenities

2 Appointment promotion, transfer, retrenchment, supersession or demotion, all kinds of leave and all kinds of punishment of the employees

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### STATEMENT OF OBJECTS AND REASONS

The State having set before itself the object of implementing the principles contained in articles 41, 42 and 43 of the Constitution, it has become necessary to assure employment and living wage to all the employees of the industrial and commercial undertakings. Such assurance cannot be secured unless the employees are associated with the management. Much misunderstanding and many industrial disputes will be avoided by such association. This will also make available to the management the advice and expert knowledge of the persons who do the effective work besides giving the employees a sense of ownership and belonging very much essential to improvement in production.

NEW DELHI;

SRINIBAS MISHRA.

*The 6th March, 1968.*

**MEMORANDUM REGARDING DELEGATED LEGISLATION**

Clauses 3(5) 4(1), 4(2) and 8 provide for delegation of legislative powers. They relate to the manner of choosing the representatives of employees, recall of representatives and other matters for carrying out the purposes of the Act, and are of normal character.

BILL No. 37 OF 1968

*A Bill further to amend the Constitution of India.*

Be it enacted by Parliament in the Nineteenth Year of the Republic of India as follows:—

1. This Act may be called the Constitution (Amendment) Act, ~~short title.~~ 1968.

Amendment  
of Article  
90.

**2.** In article 90 of the Constitution, after the proviso, the following further proviso shall be added, namely:—

5

“Provided further that a copy of such notice shall be sent to the President, who shall fix the date and time of the sitting of the Council of States for considering the resolution.”

Amendment  
of Article  
92.

**3.** In article 92 of the Constitution,—

(a) in clause (1),—

(i) for the word “while”, wherever it occurs, the words “fixed for considering” shall be substituted;

(ii) the words “is under consideration”, wherever they <sup>10</sup> occur, shall be omitted;

(b) after clause (1) the following clause shall be inserted, namely:—

15

“(A) The sitting fixed by the President under article 90 shall take place on the appointed day and at the appointed time notwithstanding any order, direction, decision or resolution to the contrary.”

Amendment  
of Article  
94.

**4.** In article 94 of the Constitution, after the first proviso, the following proviso shall be inserted, namely:—

20

“Provided further that a copy of such notice shall be sent to the President who shall fix the date and time of the sitting of the House of the People for considering the resolution.”

Amendment  
of Article  
96.

**5.** In article 96 of the Constitution,—

(a) in clause (1),—

(i) for the word “while”, wherever it occurs, the words <sup>25</sup> “fixed for considering” shall be substituted;

(ii) the words “is under consideration”, wherever they occur, shall be omitted;

(b) after clause (1) the following clause shall be inserted, namely:— <sup>30</sup>

“(1A) The sitting fixed by the President under article 94 shall take place on the appointed day and at the appointed time notwithstanding any order, direction, decision or resolution to the contrary.”

6. In article 179 of the Constitution, after the first proviso, the following further proviso shall be inserted, namely:—

Amendment  
of Article  
179.

5 “Provided further that a copy of such notice shall be sent to the Governor who shall fix the date and time of the sitting of the Assembly for considering the resolution.”

7. In article 181 of the Constitution,—

Amendment  
of Article  
181.

(a) in clause (1),—

(i) for the word “while”, wherever it occurs, the words “fixed for considering” shall be substituted;

10 (ii) the words “is under consideration”, wherever they occur, shall be omitted;

(b) after clause (1), the following clause shall be inserted, namely:—

15 “(1A) The sitting fixed by the Governor under article 179 shall take place on the appointed day and at the appointed time notwithstanding any order, direction, decision or resolution to the contrary.”

8. In article 183 of the Constitution, after the proviso, the following further proviso shall be added, namely:—

Amendment  
of Article  
183.

20 “Provided further that a copy of such notice shall be sent to the Governor who shall fix the date and time of the sitting of the Council for considering the resolution.”

9. In article 185 of the Constitution,—

Amendment  
of Article  
185.

(a) in clause (1),—

25 (i) for the word “while”, wherever it occurs, the words “fixed for considering” shall be substituted;

(ii) the words “is under consideration”, wherever they occur, shall be omitted ;

30 (b) after clause (1), the following clause shall be inserted, namely:—

“(1A) The sitting fixed by the Governor under article 183 shall take place on the appointed day and at the appointed time notwithstanding any order, direction, decision, or resolution to the contrary.”

### STATEMENT OF OBJECTS AND REASONS

Experience has shown that the presiding officers of elected Legislatures may effectively set at naught resolutions for removing them. These amendments are intended to remove the lacunae in the Constitution which place the presiding officer in a position to make the Constitution unworkable.

NEW DELHI;

SRINIBAS MISHRA.

*The 8th March, 1968.*

**BILL No. 40 OF 1968**

*A Bill further to amend the Representation of the People Act, 1951.*

Be it enacted by Parliament in the Nineteenth Year of the Republic of India as follows:—

1. This Act may be called the Representation of the People (Amendment) Act, 1968.Short title.

Insertion  
of new  
section  
86A.

Transfer  
by  
Supreme  
Court of  
election  
petition  
from one  
High  
Court to  
another  
or from  
one Judge  
of a High  
Court to  
another  
Judge  
of the  
same High  
Court.

2. In the Representation of the People Act, 1951, after section 86, the following section shall be inserted, namely:—

43 of 1951.

“86A. Whenever it appears to the Supreme Court, on ~~an~~ application made to it or *suo-moto*, that an order under this section is expedient for the ends of justice, it may direct transfer of any election petition pending in any High Court to any other High Court or where the petition is being tried by a single Judge of any High Court to another Judge of the same High Court:

Provided that an application for the transfer from one Judge or of the High Court to another Judge of the same High Court shall not be entertained unless an application in this behalf which has previously been made to the Chief Justice of that High Court has been dismissed by him.”

## STATEMENT OF OBJECTS AND REASONS

There is no provision in the Representation of the People Act 1951 for the transfer of an election petition which is pending in a High Court to any other High Court, or from one Judge of the High Court to another Judge of the same High Court, if a party has any grievance against the particular High Court, or against the particular Judge, even though the Supreme Court may be convinced of the legitimacy of such grievance.

This Bill seeks to fill in this lacuna

NEW DELHI

S. S. KOTHARI.

*The 25th March, 1968*

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S. L. SHAKDHER,  
*Secretary.*

